

**BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2018-163-E**

In Re:)	
)	
SolAmerica SC, LLC and Edgefield County)	
S1, LLC,)	
)	
Complainants,)	
)	
vs.)	ANSWER OF SOUTH CAROLINA
)	ELECTRIC & GAS COMPANY
South Carolina Electric & Gas Company)	TO COMPLAINT REQUESTING
)	STATUS QUO
Defendant/Respondent.)	
_____)	

Pursuant to 10 S.C. Code Ann. Regs. §§ 103-826 and 103-830, and in compliance with the Commission’s Notice dated June 6, 2018, issued by the Chief Clerk and Administrator for the Public Service Commission of South Carolina (“Public Service Commission or Commission”) in the above-referenced docket, the Defendant South Carolina Electric & Gas Company (“SCE&G”), by and through its undersigned counsel, hereby answers the allegations set forth in the Request for Modification, converted to a Complaint by Order of the Public Service Commission of South Carolina (“Complaint”), of solar developer Complainants/Petitioners SolAmerica SC, LLC (“SolAmerica”) and Edgefield County S1, LLC, (“Edgefield County S1”) (together “Complainants”), as follows:

ANSWER

FOR A FIRST DEFENSE
(Failure to State a Claim)

For the reasons set forth in SCE&G's Motion to Dismiss, filed June 27, 2018, Complainants have failed to set forth a claim against SCE&G, or alleged damages, and their Complaint should be dismissed.

FOR A SECOND DEFENSE
(Response to Allegations of Complaint)

Each and every allegation by the Complainants not hereinafter specifically admitted, modified, qualified or otherwise responded to by SCE&G is hereby denied, and SCE&G demands strict proof thereof. SCE&G answers the Complaint by paragraph numbers which identify the paragraph and statement in the Complaint.

AS TO THE COMPLAINT

1. Answering Paragraph 2, sentence which starts "Movants move this Commission . . .," SCE&G admits that Complainants were required under the terms of the Power Purchase Agreement ("PPA") with SCE&G to post a Development Period Credit Support ("Credit Support") in the sum of \$450,000.00. SCE&G further admits Complainants were required to post the Credit Support on or before May 9, 2018. SCE&G further admits that failure to post this Credit Support terminates the PPA. Any further allegations are denied.

2. Answering Paragraph 3, sentence which starts "It is uncontroverted. . .," SCE&G admits that Section 12.12 of the Interconnection Agreement ("IA") provides the Interconnection Customer with the right to make a unilateral filing with the Commission, but denies any legal conclusions therein and further denies that Section 12.12 of the IA relates in any way to the PPA

or excuses Complainants' failure to post the required Credit Support under the PPA. Any further allegations are denied.

3. Answering Paragraph 3, sentence which starts "With that unquestioned right. . .," SCE&G denies the conclusory statement asserted and any legal argument(s) to the extent asserted therein. SCE&G is not entirely clear regarding the claim(s), if any, Complainants seek to assert but denies that any rights provided to Complainants in the IA create or grant rights to Complainants in the PPA. The IA and PPA are two separate and distinct documents. Any further allegations are denied.

4. The remainder of Complainants' Complaint constitutes a conclusion and reservation of rights not requiring an answer. To the extent any further answer is required, SCE&G denies.

FOR A THIRD DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action before the Commission)

5. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

6. The Complaint fails to state a cause of action. There is no allegation of any act or thing done or omitted to be done by SCE&G which forms the basis for a complaint cognizable under the law or for which this Commission is empowered to grant relief. *See* S.C. Code Ann. § 58-27-1940 (2015).

7. Complainants' Complaint therefore fails to state facts sufficient to constitute a cause of action and, therefore, should be dismissed.

FOR A FOURTH DEFENSE

(Waiver)

8. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

9. Complainants' claims might be barred by the doctrine of waiver.

FOR A FIFTH DEFENSE
(Reasonableness and Good Faith)

10. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

11. SCE&G's actions were reasonable, were not arbitrary, were not capricious, and were made in good faith. By asserting this defense, SCE&G does not assume the responsibility to meet any burden of proof imposed on a complainant by statute or common law.

FOR A SIXTH DEFENSE
(Estoppel)

12. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

13. Complainants' claims are barred by the doctrine of estoppel.

FOR A SEVENTH DEFENSE
(Intervening Acts)

14. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

15. Complainants' alleged damages, if any, and SCE&G denies that any damages were suffered, were caused solely by their own acts, representations, omissions, or circumstances and/or those of third parties as a proximate cause of injuries as alleged, and therefore, SCE&G should not be liable to Complainants in any sum whatsoever.

FOR AN EIGHTH DEFENSE
(Unclean Hands)

16. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

17. Complainants' claims are barred by the doctrine of unclean hands. Complainants failed to discharge their obligations under the contract and therefore are in breach of contract.

18. At the time that SolAmerica entered into the PPA, it was aware of the terms of the IA between Edgefield County S1, a related limited liability company, and SCE&G, including without limitation the Milestones and associated deadlines set forth in the IA.

19. At the time that SolAmerica entered into the PPA it was aware that the deadlines of the PPA did not align with the deadlines of the IA. Despite this, SolAmerica entered into the PPA.

20. At the time that SolAmerica entered into the PPA, it was aware the executed PPA would be filed with this Commission, requiring the Commission to review and accept the PPA.

21. Thirty days after execution of the PPA, on or before May 9, 2018, SolAmerica failed to post a Development Period Credit Support in the sum of \$450,000.00, due pursuant to Section 9.3 of the PPA.

22. On May 9, 2018, SolAmerica requested that the Commission suspend the deadlines of the PPA and sought modification of the IA to align the dates of the two agreements. SolAmerica had full knowledge of the deadlines of the PPA and IA at the time it entered into the PPA and made this request a mere thirty days after entering into the PPA. Upon information and belief, SolAmerica's filing with the Commission is frivolous and done for the purpose of delay.

23. In particular and upon information and belief, SolAmerica knew that it had to post the Development Period Credit Support within thirty days of executing the PPA, and also knew

that SolAmerica required funding to post the Credit Support, at the time SolAmerica entered into the PPA.

24. Upon information and belief, SolAmerica knew that it had not secured funding to post the Credit Support due on May 9, 2018, when it entered into the PPA.

25. Upon information and belief, SolAmerica violated the principles of good faith and fair dealing, and in particular breached Section 15.8 of the PPA which specifies that the “Parties agree to act in accordance with the principles of good faith and fair dealing in the performance of the Agreement.”

FOR A NINTH DEFENSE
(Failure to Mitigate Damages)

26. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

27. Complainants failed, in whole or in part, to mitigate their alleged damages.

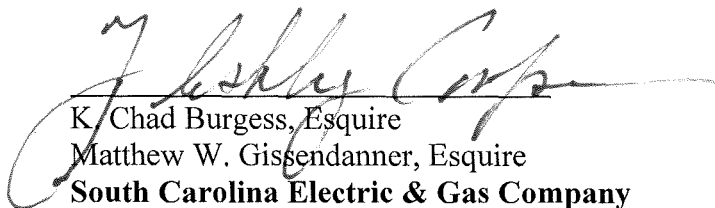
PRAYER FOR RELIEF

WHEREFORE, having fully answered Complainants' Complaint, SCE&G respectfully requests the following relief:

- A. that the relief sought in the Complaint be denied and that the Complaint be dismissed with prejudice;
- B. that the Public Service Commission of South Carolina enter judgment against SolAmerica in favor of SCE&G;
- C. that the Public Service Commission of South Carolina award SCE&G its costs and fees, including reasonable attorneys' fees;
- D. that the Public Service Commission of South Carolina impose sanctions upon SolAmerica pursuant to S.C. Code Ann. § 15-36-10(B)(2), including reasonable costs and attorneys' fees as provided by S.C. Code Ann. § 15-36-10(G)(1); and
- E. that the Public Service Commission of South Carolina grant SCE&G such other and further relief as it deems just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,



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***Attorneys for South Carolina Electric &
Gas Company***

Cayce, South Carolina
July 3, 2018

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DOCKET NO. 2018-163-E

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Defendant/Respondent.)	
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**ANSWER OF SOUTH CAROLINA
ELECTRIC & GAS COMPANY
TO COMPLAINT REQUESTING
STATUS QUO**

This is to certify that I have this day caused to be served upon the person(s) named below the *Answer to Complaint Requesting Status Quo* by electronic mail and/or by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

(via email: rlwhitt@austinrogerspa.com)
Richard L. Whitt
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, South Carolina 29201

(via email: abateman@regstaff.sc.gov)
Andrew M. Bateman
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

This 3 day of July, 2018

